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CONTROLLER GENERAL OF THE UNITED STATES
Washington 25

B-147798

2 January 1962

Honorable John A. McCone
Director, Central Intelligence Agency

Dear Mr. McCone:

We refer to your letter of December 12, 1961, regarding the propriety of your delegating to your Deputy Director the exercise of certain functions involving the expenditure of funds which by law are vested in the Director of the Central Intelligence Agency.

As you say, the National Security Act of 1947, 61 Stat. 495, 497, which established the office of the Director of the Central Intelligence, did not provide for a Deputy Director. Subsequently, the Central Intelligence Agency Act of 1949, 63 Stat. 208, was enacted for the purpose of granting the Central Intelligence Agency necessary authority for its proper and efficient administration. That act contains several provisions involving the expenditure of funds. It vests action thereon in the Director. Section 3(b) of that act defines the term "Agency head" as including "Deputy Director." It is significant too that section 6(a) of the Executive Pay Act of 1949, 63 Stat. 880, 881, likewise refers to the Deputy Director of Central Intelligence and sets his basic compensation. On April 4, 1953, the National Security Act of 1947 was amended (Public Law 15, 67 Stat. 19) to provide for the statutory office of a Deputy Director of Central Intelligence who, like the Director, is appointed by the President by and with the advice and consent of the Senate.

You point out that "it has been the practice in those cases where statutes granted authorization to the Director for him personally to take the actions specified." You believe that, with the growing complexity of the activities of your Agency, it would be in the interest of efficient and orderly administration of the functions vested by law in the head of the Agency to have, except ~~when~~ the law specifically precludes delegation, certain authorities exercised by the Deputy Director. Therefore, if we do not object you intend to prescribe certain areas in which the Deputy Director of Central Intelligence will take final action in connection with the expenditure of funds under the National Security and Central Intelligence Agency acts, including the certification of expenditures provided in section 8 of the 1949 act, as amended.

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Section 102 of the National Security Act of 1947 as amended April 4, 1953, provides, in part, as follows:

"(a) There is hereby established under the National Security Council a Central Intelligence Agency with a Director of Central Intelligence who shall be the head thereof, and with a Deputy Director of Central Intelligence who shall act for, and exercise the powers of, the Director during his absence or disability. The Director and the Deputy Director shall be appointed by the President, by and with the advice and consent of the Senate * * *.

"(b) (1) If a commissioned officer of the armed services is appointed as Director, or Deputy Director, then --

* * * * *

"(B) he shall not possess or exercise any supervision, control, powers, or functions (other than such as he possesses, or is authorized or directed to exercise, as Director, or Deputy Director) with respect to the armed services or any component thereof, * * *."

Section 8(b) of the Central Intelligence Agency Act of 1949, provides:

"(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified."

Our Office has held that notwithstanding the absence of specific statutory authority for an Assistant Secretary of a department to act in lieu of the head of the department in matters of discretion vested by law in such head, the title and nature of the position of such Assistant Secretary is such as to authorize him to assist and to act in lieu of the head in matters requiring his attention or discretion when authorized by him to so do. 20 Comp. Gen. 27, id. 797; 29 id. 151.

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Section 102(a), above, does not set forth the duties of the Deputy Director of Central Intelligence or provide specifically that he shall perform such duties as the Director may prescribe. He is, however, authorized to "act for, and exercise the powers of, the Director during his absence or disability." We do not construe such authorization as limiting the otherwise proper exercise by the Deputy Director of duties vested in the Director. The authorization to act as Director would seem more properly to be construed as limiting his right to function as "Acting Director." Cf. 5 U.S.C. 4. We have no reason to doubt that the Congress, in providing for a Deputy Director in the 1953 amendment, was well aware of the general rule in our decisions above referred to, and had the Congress intended to restrict the assignment of duties by the Director to his Deputy Director it would have so stated. Moreover, in House of Representatives Report No. 219, on S. 1110, enacted as Public Law 15, above, we find the statement that "There is no existing provision of law establishing a Deputy Director with statutory authority to act for the Director or to perform such functions as the Director may assign to him." The same statement was made in the debate on the bill in the House of Representatives, Congressional Record, April 1, 1953, page 2742. Our view is that it is inherent in the statutory position of the Deputy Director that the holder will assist the Director in the performance of his duties, including those vested by law in the Director.

It is our opinion, therefore, that there is no legal objection to your providing the areas in which the Deputy Director of Central Intelligence will take final action regarding the expenditure of funds under the National Security and Central Intelligence Agency acts, including the certification of expenditures provided for in section 8 of the Central Intelligence Act of 1949, as amended.

Sincerely yours,

JOSEPH CAMPBELL

Comptroller General
of the United States